

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AFFYMETRIX, INC.,

Plaintiff/Counter-
Defendant,

v.

ILLUMINA, INC.,

Defendant/Counter-
Plaintiff.

C.A. No. 04-901-JJF

**NOTICE OF DEPOSITION OF ILLUMINA, INC.
PURSUANT TO FED. R. CIV. P. 30(b)(6)**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff Affymetrix, Inc. (“Affymetrix”), by and through its attorneys, will take the deposition of Illumina, Inc. (“Illumina”) by oral examination at the Hilton San Diego Airport/Harbor Island Hotel, 1960 Harbor Island Drive, San Diego, California, 92101. Illumina is directed, pursuant to Federal Rule of Civil Procedure 30(b)(6), to designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf with respect to the matters set forth in Attachment A.

The deposition will commence at 9:00 a.m. on August 25, 2005. The deposition will be recorded stenographically, with the capacity to provide instant visual display or playback of the testimony, and by video by an officer authorized to administer oaths. All counsel are invited to attend and examine the witness.

MORRIS, NICHOLS, ARSHT & TUNNELL

/s/ Maryellen Noreika

Jack B. Blumenfeld (#1014)

Maryellen Noreika (#3208)

1201 N. Market Street

P.O. Box 1347

Wilmington, DE 19899-1347

(302) 658-9200

Attorneys for Plaintiff/Counter-Defendant

Affymetrix, Inc.

OF COUNSEL:

Michael J. Malecek

Daniel R. Reed

George C. Yu

Andrea L. Gross

AFFYMETRIX, INC.

6550 Vallejo Street, Suite 100

Emeryville, CA 94608

(510) 428-8500

August 8, 2005

ATTACHMENT A

DEFINITIONS

Affymetrix hereby incorporates by reference the Definitions included in Affymetrix, Inc.'s First Set of Requests for Production of Documents, served on February 8, 2005, Affymetrix, Inc.'s Second Set of Requests for Production of Documents, served on March 30, 2005, and Affymetrix, Inc.'s Third Set of Requests for Production of Documents, served on July 20, 2005.

AREAS OF TESTIMONY

1. Illumina's document retention policies, if any.
2. Illumina's efforts to preserve documents following the filing of the instant lawsuit by Affymetrix on July 26, 2004.
3. Illumina's creation, preservation, destruction, and maintenance of documents responsive to Affymetrix's First Set of Requests for Production of Documents, served on February 8, 2005.
4. Illumina's attempt to identify and collect documents responsive to Affymetrix's First Set of Requests for Production of Documents, served on February 8, 2005.
5. Illumina's response to Affymetrix's First Set of Requests for Production of Documents, served on February 8, 2005.
6. Illumina's creation, preservation, destruction, and maintenance of documents responsive to Affymetrix's Second Set of Requests for Production of Documents, served on March 30, 2005.
7. Illumina's attempt to identify and collect documents responsive to Affymetrix's Second Set of Requests for Production of Documents, served on March 30, 2005.

8. Illumina's response to Affymetrix's Second Set of Requests for Production of Documents, served on March 30, 2005.

9. Illumina's creation, preservation, destruction, and maintenance of documents responsive to Affymetrix's Third Set of Requests for Production of Documents, served on July 20, 2005.

10. Illumina's attempt to identify and collect documents responsive to Affymetrix's Third Set of Requests for Production of Documents, served on July 20, 2005.

11. Illumina's response to Affymetrix's Third Set of Requests for Production of Documents, served on July 20, 2005.

12. Illumina's electronic document archival system, including but not limited to archiving of e-mails, electronic calendars, and other electronic documents.

13. Illumina's efforts to search for electronic documents, including but not limited to e-mails, in response to Affymetrix's First, Second, and Third Sets of Requests for Production, including, but not limited to, search terms employed, employees contacted, and files and servers searched.

14. Illumina's creation, preservation, destruction, and maintenance of laboratory notebooks.

15. Illumina's creation, preservation, destruction, and maintenance of BeadArray Array technical documents, including product specifications, technical manuals, product manuals, user manuals, and other documents relating to BeadArray Arrays.

16. Illumina's creation, preservation, destruction, and maintenance of BeadArray Instrument technical documents, including product specifications, technical manuals, product manuals, user manuals, and other documents relating to BeadArray Instruments.

17. Illumina's creation, preservation, destruction, and maintenance of BeadArray Software technical documents, including product specifications, technical manuals, product manuals, user manuals, and other documents relating to BeadArray Software.

18. Illumina's creation, preservation, destruction, and maintenance of documents relating to Illumina's costs, profits, sales, and royalties or licensing fees associated with Bead Array Arrays, BeadArray Instruments, and BeadArray Software.

19. Illumina's creation, preservation, destruction, and maintenance of license agreements relating in any way to Bead Array Arrays, BeadArray Instruments, and BeadArray Software, including but not limited to patent licenses.

20. Illumina's creation, preservation, destruction, and maintenance of marketing documents relating to Bead Array Arrays, BeadArray Instruments, and BeadArray Software.

21. Illumina's creation, preservation, destruction, and maintenance of documents relating to CyVera.

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2005, I electronically filed a Notice of Deposition of Illumina, Inc. Pursuant to Fed. R. Civ. P. 30(b)(6) using CM/ECF which will send notification of such filing(s) to the following:

Richard K. Herrmann
Mary B. Matterer
Morris, James, Hitchens & Williams LLP
222 Delaware Avenue, 10th Floor
P.O. Box 2306
Wilmington, DE 19899-2306

I hereby certify that on August 8, 2005 I have caused to be sent by Federal Express, the above-mentioned document to the following:

Marcus E. Sernel
Kirkland & Ellis LLP
200 East Randolph Drive
Chicago, IL 60601

/s/ Maryellen Noreika
Maryellen Noreika (#3208)

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